

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

REGINALD JONES,

Plaintiff,

v.

HSBC Bank USA, N.A., et al

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Civil No. 09-2904 RWT

OPPOSITION TO MOTION TO DISMISS

Comes Now, Plaintiff Reginald Jones, by and through his counsel Jon D. Pels, Lawrence J. Anderson, Justin Reiner, Jennifer Schiffer, and Pels Anderson, LLC and opposes the Defendants Motion to Dismiss. In support of this opposition, Plaintiff states:

1. The Defendants' motion to dismiss is moot because of the pending Motion for Leave to file an Amended Complaint (Document 39). Plaintiff incorporates by reference that motion as if pled in its entirety herein. The original complaint pled six (6) causes of action:

1. Violation of the Fair Debt Collections Practices Act;
2. Declaratory Judgment Relief;
3. Breach of Fiduciary Duty;
4. Quiet Title;
5. Injunctive Relief to Stop Unlawful Eviction; and
6. Fraud.

2. The Plaintiff's Amended Complaint voluntarily dismissed several defendants, and abandoned the causes of action for Breach of Fiduciary Duty, Quiet Title, and Injunction to Stop foreclosure and eviction. Additionally, Plaintiff seeks to represent a class of plaintiffs similarly situated in the State of Maryland. Plaintiff's Amended Complaint pleads a very different set of fact and legal theories to support the claims for violation of the Fair Debt Collections Practices Act claim, the injunction/declaratory

relief claim, and the common law fraud claim. The Plaintiff added counts with specific facts to support these claims, as well as new claims for willful violation of the Maryland Annotated Code, Real Property Article, Sections 7-105.1 and Section 7-105.2, Breach of Contract, Unjust Enrichment, and violation the Maryland Consumer Protection Act.

3. The Defendants' request for relief dismissing a request for Temporary Injunction is moot because the request was withdrawn.

4. Defendants' assertion that *res judicata* is a bar to all claims is misplaced because Maryland Annotated Code, Real Property Article Section 7-105.1(o) expressly provides that a cause of action must be commenced within three (3) years of the order of ratification. RP § 7-105.1(o).¹ Section 7-105.2 contains a similar statute of limitation after the order of ratification. Plaintiff's new causes of action could not by the terms of the statute be barred by *res judicata*. The foreclosure sale against the Plaintiff was ratified by the Circuit of Montgomery County on or about October 7, 2009. The Defendants removed this case to this forum from a state court proceeding, and have chosen to have the Plaintiff's grievances against them litigated in this forum.

5. Defendants asserted that the Rooker-Feldman doctrine barred relief in this court. However, the Defendant *removed* this case from state court, and the Plaintiff originally sought relief from the state court. Accordingly, Defendant is estopped to argue that this court should abstain because the Plaintiff has chosen a forum that cannot provide relief.

6. In the interests of justice, the Plaintiff should be permitted an opportunity to plead a set of facts and legal theories that show Plaintiff is entitled to relief.

¹ At the time of the Plaintiff's foreclosure sale the citation to the limitations period was RP § 7-105.1(i).

WHEREFORE, Plaintiff prays that the motion to dismiss be denied as moot, or in the alternative granted in part without prejudice with leave for the plaintiff to amend, and for such other and further relief as the cause may require.

Respectfully submitted,

PELS, ANDERSON and LEE, L.L.C.

Dated: November 8, 2010

/s/ Lawrence J. Anderson
Lawrence J. Anderson, Esq.
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Justin Reiner, Esquire
Jennifer O. Schiffer, Esquire
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Counsel for the Plaintiffs

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing Opposition to Motion to Dismiss has been filed with the court via the electronic filing system and via first-class mail this 8th day of November, 2010, to the following:

Russell J. Pope
Trenor Pope & Hughes
29 W. Susquehanna Avenue
Suite 110
Towson, MD 21204

/s/ Lawrence J. Anderson
Lawrence J. Anderson